

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

4:19CV3005

MEMORANDUM AND ORDER

This matter is before the court on the Notice of Appeal, [Filing No. 62](#), and Motion for Leave to Appeal in Forma Pauperis (“IFP”), [Filing No. 63](#), filed by Petitioner Justin Gardner (“Gardner”) on December 22, 2025. Upon careful review, it appears Gardner does not seek to appeal from any order and judgment entered in the present case, but rather seeks to appeal the Court’s December 11, 2025, order returning his original submission in the Court’s 2025 Pro Se Correspondence designation at 4:25-ps-3000 (the “Return Order”). See [Filing No. 60](#), 4:25-ps-3000. In the Return Order, the Court returned materials Gardner sent to the Court because the materials were designated for case number, “8:18cv115,” but Gardner is not a party to that case, and he has no open cases in this Court.

Thus, upon review, it appears Gardner filed his Notice of Appeal in the wrong case as the Return Order has no discernible relation to the present case. If Gardner truly seeks to appeal from the Return Order, then he should have captioned his Notice of Appeal in the 4:25-ps-3000 designation and the Court would have docketed and processed the appeal in a new case and Gardner would have been required to pay the entire \$605.00 appellate filing fee pursuant to the Prison Litigation Reform Act (“PLRA”),

see 28 U.S.C. § 1915(b). As it stands, the Court is uncertain what Gardner is trying to do by filing the Notice of Appeal in this case, 4:19CV3005.

Accordingly, the Court will order Gardner to show cause within 30 days why his Notice of Appeal and Motion for Leave to Appeal IFP should not be stricken from the present case and docketed in a new, separate case as an appeal of the December 11, 2025, Return Order. To be clear, Gardner must file a written response to this order by February 12, 2026, explaining what he intends by filing his Notice of Appeal in the present case and if he truly seeks to appeal the December 11, 2025, Return Order returning documents to him. If Gardner does not actually wish to prosecute an appeal of the Return Order to the Eighth Circuit Court of Appeals, then he may request to withdraw his Notice of Appeal and no appeal will be processed. **Gardner is warned that if he fails to adequately respond to this show cause order, then the Court will docket his Notice of Appeal and Motion for Leave to Appeal IFP in a new, separate case, and Gardner will be required under the PLRA to pay the full \$605.00 appellate filing fee in installments as long as he remains a prisoner.**

IT IS THEREFORE ORDERED that:

1. Gardner has until **February 12, 2026**, to file a written response to this order and show cause why his Notice of Appeal and Motion for Leave to Appeal IFP should not be stricken from the present case and docketed in a new, separate case as an appeal of the December 11, 2025, Return Order in 4:25-ps-3000.

2. In his written response, Gardner must clearly indicate what his intention is by filing his Notice of Appeal in this case and whether he truly seeks to file an appeal of the December 11, 2025, Return Order. If Gardner does not want to prosecute an

appeal of the Return Order, then he may request to withdraw his Notice of Appeal and no appeal will be processed or filing fee assessed.

3. If Gardner fails to respond to this show cause order or withdraw his appeal, then the Court will docket his Notice of Appeal and Motion for Leave to Appeal IFP in a new, separate case, assess the full \$605.00 appellate filing fee against Gardner, and process his appeal to the Eighth Circuit Court of Appeals.

4. The Court will wait to take any action on Gardner's Notice of Appeal and Motion for Leave to Appeal IFP until after he has an opportunity to respond to this show cause order.

5. The Clerk of Court is directed to set a pro se case management deadline using the following text: **February 12, 2026**: deadline for Gardner's response to show cause order or to withdraw appeal.

Dated this 13th day of January, 2026.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge